



PATENT

Attorney Docket No. 186257/US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re : Westberry, et al.

Appl. Serial No.: 10/588,689

Filing Date: June 29, 2007

For: *dUTP Based Compositions for Reducing
Primer-Aggregate Formations During Nucleic
Acid Amplification*

Assignee: Qiagen GmbH

Conf. No. 9609

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence, including listed enclosures,
is being facsimile transmitted to the United States Patent and
Trademark Office on the date shown below:

Dated: JANUARY 24, 2011Signed: Nicholas Garnett
Nicholas Garnett**Petition to Withdraw a Holding of Abandonment Under 37 C.F.R. § 1.181(a)**

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby petition under 37 C.F.R. §1.181(a) for the withdrawal of the holding of abandonment for the above-referenced application.

On October 1, 2010, Applicants received a Notice of Allowance and Fee(s) due, which set forth a deadline of January 3, 2011 for payments of the issue (\$1510) and the publication (\$300) fees in the above-identified application.

On December 17, 2010, more than two weeks before the deadline set forth in the Notice of Allowance and Fee(s) due, Applicants completed blocks 1-3 of the Fee(s) Transmittal Form PTOL-85 and sent the form via facsimile to the U.S.P.T.O. Copies of the transmitted form (Exhibit A) and the facsimile transmission record with a time stamp (Exhibit B) are submitted herewith.

WEST:30727138v1

On January 19, 2011, Applicants received a Notice of Abandonment for the following reason "No deposit account number." Upon review, it was discovered that blocks 4a and 4b of the Fee(s) transmittal form were inadvertently uncompleted.

Although blocks 4a and 4b were not completed, Applicants submit that the application was needlessly abandoned. Under 37 C.F.R. 1.135, "[w]hen the reply by the applicant is a *bona fide* attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but . . . compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply . . . to supply the omission. See also, 37 C.F.R. 1.135 (providing the same opportunity during an *inter partes* reexamination). Applicants respectfully request the same recourse here with regard to payment of the issue and publication fees.

As is detailed above, the Fee(s) transmittal form was substantially completed and transmitted to the U.S.P.T.O. well in advance of the deadline. Applicants submit that the completion of blocks 1-3 and transmittal of the form more than two weeks prior to the deadline represents a *bona fide* attempt by the Applicant to provide a complete reply to the Notice of Allowance. As such, Applicants request a new time period for reply and to supply the issue and publication fees.

Accordingly, Applicants respectfully petition the Commissioner to withdraw the holding of abandonment.

If this petition to withdraw the holding of abandonment in the above-identified application is granted, Applicants also hereby request our Deposit Account No. 50-2387 be charged for the issue and publication fees due totaling \$1810.00. A completed Form PTOL-85 (Exhibit C) is attached hereto.

If this petition to withdraw the holding of abandonment in the above-identified application is dismissed, Applicants respectfully request the Commissioner to accept an unintentionally delayed payment of the issue and publication fees for issuing a patent under 37 C.F.R. §1.137(b) by charging our Deposit Account No. 50-2387 in the amount of \$1810.00. If required, Applicants authorize the Commissioner to charge our Deposit Account No. 50-2387 the petition fee of \$1620.00 under 37 C.F.R. §1.117(m) with acceptance of the attached Form

WEST:30727138v1

PTO/SB/64 petitioning for revival of an application for patent abandoned unintentionally under 37 C.F.R. 1.137(b).

If additional charges are deemed appropriate, the undersigned representatives hereby authorize the U.S. Patent and Trademark Office to charge the fee to our Deposit Account No. 50-2387, referencing Attorney Docket No. 186257/US.

Respectfully submitted,
ARNOLD & PORTER LLP

Dated: 1/24/11

Customer Number: 28381

Arnold & Porter LLP

One Embarcadero Center, 22nd Floor

San Francisco, CA 94111

Telephone: (415) 356-3000

Facsimile: (415) 356-3099

By: 

Todd A. Lorenz, Reg. No. 39,754

Filed Under 37 C.F.R. § 1.34

WEST:30727138v1

EXHIBIT A



PART B - FEE(S) TRANSMITTAL

and send this form, together with applicable fee(s), to: **Mail Stop ISSUE FEE**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
 or Fax **(571)-273-2885**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advances orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Please Use Block 1 for any change of address)

35381 7590 1041/2010
ARNOLD & PORTER LLP
ATTN: IP DOCKETING DEPT.
555 TWELFTH STREET, N.W.
WASHINGTON, DC 20004-1206

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

NICHOLAS BARNETT (Depositor's name)
 [Signature] (Signature)
 (Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,699	06/29/2007	Ryan Smith Westberry	186257/US	9609

TITLE OF INVENTION: DUTP BASED COMPOSITIONS FOR REDUCING PRIMER-AGGREGATE FORMATIONS DURING NUCLEIC ACID AMPLIFICATION

APPL. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	01/03/2011

EXAMINER	ART UNIT	CLASS-SUBCLASS
KIM, YOUNG J	1637	435-051200

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" Indication (or "Fee Address" Indication form PTO/SB/127; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

(1) the names of up to 3 registered patent attorneys or agents OR, alternatively,

(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 3 registered patent attorneys or agents. If no name is listed, no name will be printed.

1. **TODD LORENZ**
 2. **ARNOLD & PORTER LLP**
 3. _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.111. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNOR

QIAGEN NORTH AMERICAN HOLDINGS

(B) RESIDENCE (CITY and STATE OR COUNTRY)

VALENCIA, CALIFORNIA

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

☐ Issue Fee

☐ Publication Fee (No small entity discount permitted)

☐ Advance Order - # of Copies _____

4b. Payment of Fee(s) (Please first supply any previously paid issue fee shown above)

☐ A check is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit (any overpayment, to Deposit Account Number _____) (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant, a registered attorney or agent, or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____

Date _____

Typed or printed name _____

TODD LORENZ

Registration No. _____

89754

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

EXHIBIT B

12/17/2010 15:28 FAX 4153563099

ARNOLD & PORTER, LLP#21

001

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 2201
 RECIPIENT ADDRESS 15712732885
 DESTINATION ID
 ST. TIME 12/17 15:28
 TIME USE 00'53
 PAGES SENT 1
 RESULT OK

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** Mail Stop ISSUE FEE
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 or **Fax** (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (from the Block 1, for any change of address)

2331 7590 10/01/2010
 ARNOLD & PORTER LLP
 ATTN: IP DOCKETING DEPT.
 555 TWELFTH STREET, N.W.
 WASHINGTON, DC 20004-1206

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

NICHOLAS BARNETT (Depositor's name)
 [Signature] (Signature)
 (Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,689	06/29/2007	Ryan Smith Westberry	186257/US	9609

TITLE OF INVENTION: DUPI BASED COMPOSITIONS FOR REDUCING PRIMER-AGGREGATE FORMATIONS DURING NUCLEIC ACID AMPLIFICATION

APPL. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	01/03/2011

EXAMINER	ART UNIT	CLASS-SUBCLASS
KIM, YOUNG J	1637	435-091200

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/147, Rev 03-02, or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
 (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1. TODD LORENZ
 2. ARNOLD & PORTER LLP
 3.

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

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(A) NAME OF ASSIGNEE

(B) RESIDENCE (CITY AND STATE OR COUNTRY)

QIAGEN NORTH AMERICAN HOLDINGS VALENCIA, CALIFORNIA

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
☐ Publication Fee (No small entity discount permitted)

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
☐ Payment by credit card. Form PTO-2038 is attached.

EXHIBIT C

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** Mail Stop ISSUE FEE
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 or **Fax** (571)-273-2885

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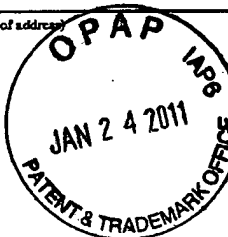
CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

28381 7590 10/01/2010

ARNOLD & PORTER LLP
 ATTN: IP DOCKETING DEPT.
 555 TWELFTH STREET, N.W.
 WASHINGTON, DC 20004-1206

01/25/2011 CORRE 0030012 502387 10506689

02 FC:1501 1510.00 DA
 03 FC:1501 1510.00 DA



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NICHOLAS GARNETT (Depositor's name)
 (Signature)
 JANUARY 24, 2011 (Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,689	06/29/2007	Ryan Smith Westberry	186257/US	9609

TITLE OF INVENTION: DUTP BASED COMPOSITIONS FOR REDUCING PRIMER-AGGREGATE FORMATIONS DURING NUCLEIC ACID AMPLIFICATION

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EXAMINER	ART UNIT	CLASS-SUBCLASS
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☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
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1. TODD LORENZ
 2. ARNOLD & PORTER LLP
 3.

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(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

DIAGEN NORTH AMERICAN HOLDINGS

VALENCIA, CALIFORNIA

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4a. The following fee(s) are submitted:

- ☒ Issue Fee
☒ Publication Fee (No small entity discount permitted)
☐ Advance Order - # of Copies

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
☐ Payment by credit card. Form PTO-2038 is attached.
☒ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number 502387 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature

Date

Typed or printed name

Registration No.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Doc Code: PET.OP

Document-Description: Petition for Review by the Office of Petitions

PTO/SB/64 (07-09)

Approved for use through 07/31/2012. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)
186257/USFirst named inventor: Ryan Smith WestberryApplication No.: 10/588,689

JAN 24 2011

Art Unit: 1637Filed: June 29, 2007Examiner: Kim, Young J.Title: dUTP Based Compositions for Reducing Primer-Aggregate Formation During Nucleic Acid Amplification

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional

1. Petition Fee

- ☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Application claims small entity status. See 37 CFR 1.27.
- ☒ Other than small entity-fee \$ 1620.00 (37 CFR 1.17(m))

2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office action in the form of Fee(s) Transmittal Form PTOL-85 (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

- B. The issue fee and publication fee (if applicable) of \$ 1810.00

- ☐ has been paid previously on _____.
- ☒ is enclosed herewith.

(Page 1 of 2)

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/64 (07-09)

Approved for use through 07/31/2012. OMB 0851-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number


3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$_____ for a small entity or \$_____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



Signature
Todd Lorenz

Type or Printed name
One Embarcadero Center, 22nd Floor

Address
San Francisco, CA 94111

Address

1/24/11

Date
39,754

Registration Number, if applicable
415-356-3064

Telephone Number

Enclosures:

- ☒ Fee Payment
- ☐ Reply
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unintentional delay
- ☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- ☒ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

1/24/11

Date



Signature

Nicholas Garnett

Typed or printed name of person signing certificate